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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

NO. 374

JAMES A. TOTTEN,
d/b/a TOTTEN AND DUNN COMPANY,
Petitioner,

v.

LOCAL 43 OF UNITED ASSOCIATION
OF JOURNEYMEN AND APPRENTICES
OF THE PLUMBING AND PIPE FITTING
INDUSTRY OF THE UNITED STATES
AND CANADA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JOHN A. CHAMBLISS, JR.,
1111 Maclellan Building,
Chattanooga, Tenn., 37402,

Attorney for Petitioner.

SIZER CHAMBLISS,
400 Pioneer Building,
Chattanooga, Tenn., 37402,

Of Counsel.

TENNESSEE LAW PRINTERS, P. O. Box 277, Knoxville, Tennessee, Phone 525-4202

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TO THE HONORABLE, THE CHIEF JUSTICE, AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in the above case on May 9, 1968

OPINIONS BELOW

The opinion of the District Court filed December 13, 1966 (Appendix, page 18), is unreported. The order of the Court of Appeals for the Sixth Circuit (no opinion filed) is located in the Appendix at page 25.

JURISDICTION

The order of the Court of Appeals for the Sixth Circuit was entered on May 9, 1968. The jurisdiction of this Court is invoked under 28 USC, § 1254(1).

QUESTION PRESENTED

Does a federal court ever have jurisdiction to determine whether an alleged arbitration ruling is legally or factually correct?

STATUTES INVOLVED

Section 301(a) [29 U.S.C. 185(a)] of the Labor-Management Relations Act reads:

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter or between any such labor organizations, may be brought in any District Court of the United States having jurisdiction of the parties, without respect to amount in controversy or without regard to the citizenship of the parties."

STATEMENT OF THE CASE

On June 22, 1966, or shortly thereafter, your petitioner, who was party to a contract with the respondent, received a letter from the respondent stating "your contract is can-

celled." The reason given was that Totton (the Petitioner) was "working people who are not furnished by the Local." The last paragraph of this letter (page 12 of the Appendix) reads:

> "Under the agreement you have the right to appeal to the Joint Conference Board (Section 21) within 10 days in writing."

Totton appealed to the Joint Conference Board, which Board on June 30, 1966, affirmed the cancellation of the contract. (See letter from the Joint Conference Board, page 17, Appendix.) This suit was filed on July 1, 1966 (Appendix, page 7), asking that the Court declare the rights of the parties, and in particular that the Court determine whether Totton was required by the contract to hire only men furnished by the Union (respondent), *even after the Union refused to furnish men to Totton*. Jurisdiction was invoked under Section 301(a), Labor Management Relations Act.

The Union replied (Appendix, page 14), that the "plaintiff elected the Joint Conference Board, the arbitration tribunal chosen by the parties, to act upon the matter," and then claimed that the action of the Joint Conference Board was res judicata.

The Union filed a motion for summary judgment (Appendix, page 15), based upon the allegation that the hearing before the Joint Conference Board was in fact an arbitration, and therefore was final and binding, and the plaintiff had no recourse to Court review. Totton contended that the submission to the Joint Conference Board was an appeal, and amounted only to an exhaustion of an administrative remedy.

The District Court in its opinion (Appendix, page 20) quoted Article XXI from the contract, held that the sub-

mission to the Joint Conference Board was an arbitration, and granted a summary judgment in favor of the Union.

ARGUMENT

Two questions are raised in this petition: First, whether the finding of an arbitrator (or arbitration board) is reviewable by a court where there are *no* facts to support the finding; and second, whether a hearing, denominated an "appeal," before a board, no member of which is selected by the aggrieved party, is an "arbitration," or an administrative appeal.

The District Court cites the "steel workers trilogy" (*United Steelworkers of America v. American Mfg. Co.*, 363 U.S. 565; *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574; and *United Steelworkers v. Enterprise Corp.*, 363 U.S. 593) as holding that "The Court would not be permitted to weigh the merits of the arbitration decision," and that therefore "the decision of the Joint Conference Board would be conclusive upon the issue here sought to be raised by the plaintiff."

The "steel workers trilogy" does not so hold.

In those cases, an attempt was made to have the Court decide the legality of the questions raised *before* they were submitted to arbitration. If the Joint Conference Board hearing was an arbitration, the arbitration has been completed. At this point then, whether the question was arbitrable is for the courts. See *Metal Products Workers v. Torrington*, 358 F.2d 103; *Local No. 490 v. Kirkhill Rubber Co.*, 367 F.2d 956. In other words, if an arbitrator arbitrarily makes a decision totally unsupported by facts, there can be judicial review and reversal.

The second question regards the effect of the Joint Conference Board hearing. Was it an arbitration? The

letter from the Union (Appendix, page 12) refers to the "right to appeal" to the Joint Conference Board, and the applicable portion of the contract (Article XXI, Section 3.) also speaks of "appeals." In the present case Totton thought he had to go before the Joint Conference Board before he could or should resort to the Court. The Joint Conference Board was selected, four by the Union and four by the Chattanooga Plumbing and Piping Contractors Association, Inc., and Totton was not a member of this Association.

The District Court decided this case on motion for summary judgment, without oral hearing, entirely on the basis of the admitted fact that the dispute was submitted to the Joint Conference Board. The factual dispute as to whether the submission was an appeal or an arbitration was decided adversely to Totton because of the wording of the contract; and the District Court then held that under the decision of this Court in the "steelworkers trilogy" no inquiry could be made into the legality of the results of the "arbitration."

CONCLUSION

It is earnestly urged that this Court remand the case to the District Court with instructions to hear the case on the merits. The statute [29 U.S.C. 185(a)] plainly gives jurisdiction, and there is no indication that this jurisdiction is subsidiary to that of a Joint Conference Board.

Otherwise, it would *never* be possible for a Court to review the legality of an arbitration. The "steelworkers trilogy" certainly laid down no such rule.

Respectfully submitted,

JOHN A. CHAMBLISS, JR.,
1111 Maclellan Building,
Chattanooga, Tennessee 37402,
Attorney for Petitioner.

SIZER CHAMBLISS,
400 Pioneer Building,
Chattanooga, Tennessee 37402,
Of Counsel

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